the public and an order of a Council which permits a third party to use a piece of land for putting one brick on another also, presumably, for sale to the public. In both cases what is permitted to be done cannot be done without permission. In both cases it is the decision to grant that permission that is the subject of complaint. In both cases the rights of third parties are affected.

I think perhaps the relevant paragraph of the order in the present case might have been more happily worded. It might have been more appropriate to order a stay of "the use of the said site plan and building plans", but the practical result would have been exactly the same. The answer is in my opinion, as Mr. N. Sharma submitted, an early hearing of the motion, which is the entire purpose of Order 59.

The motion is dismissed with costs.

Motion dismissed.

Solicitors: *Sharma & Co.*; *Lim Ewe Hock & Tan Lye Huat & Co.*

SANDISON v. MALAYAN TIMES LTD. & ORS.

[O.C.J. (Ong J.) July 27, 1964]

[K.L. — Civil Suit No. 3 of 1963]

Libel and Slander — Newspaper report stating plaintiff dismissed from employment for corruption — Plaintiff alleging injury to credit and reputation by public scandal, odium, and contempt — Defence that publication was bona fide — Justification — Delay in offer of amends — Whether reasonable care taken by publishers — Defamation Ordinance, 1957, s. 7.

Damages — Libel — Conduct of plaintiff to be taken into account — Whether any residue of credit left to be damaged — Nominal damages.

The plaintiff, a 52 year old rubber planter of over 25 years standing, was the only senior expatriate officer in the Rubber Industry (Replanting) Board, being its General Manager since 1959. He was given notice of summary dismissal on October 26, 1962 and was required forthwith to hand over his duties to another officer of the board not later than October 31, 1962. On November 13, 1962 the defendant's newspaper published an article with big headlines entitled "RRB Expatriate 'Packed Off' for Corruption". The article stated that the services of a senior expatriate officer were terminated on November 1, 1962 and his duties were taken over by a senior local officer. It also contained the record of an interview by the defendants' reporter with the Director of the Anti-Corruption Agency in which the latter commented about the difficulties of obtaining a conviction in corruption cases.

The plaintiff claimed that the defendants meant and were understood by the readers to mean that the plaintiff was the person referred to in the report and that he had thereby been greatly injured in his credit and reputation and in his career as a rubber planter and had been brought to public scandal, odium and contempt. The plaintiff therefore claimed damages for libel. The defendants admitted the publication but denied everything else. They contended that the publication was made *bona fide* without malice or negligence and innocently and that they made an offer of amends by letters dated January 3, 1963 and January 24, 1963 which offers had not been withdrawn. Finally the defendants relied on justification and claimed that the words complained of were true in substance and in fact.

Held: (1) the headlines and the article following were defamatory in their ordinary and natural meaning and the plaintiff was clearly pin-pointed in the article so as to be instantly recognisable by all those readers of the newspaper who happened to know him;

(2) in the context of the headlines and the article (read together) the reference to obtaining a conviction in court made it clear beyond any equivocation that the word "corruption" bore the meaning it has in the title of the Prevention of Corruption Act;

(3) the defendants failed to justify that the plaintiff was corrupt in the sense made in the headlines and article;

(4) the offer of amends was not made as soon as practicable after the defendants received notice that the publication was or might be defamatory of the plaintiff because a whole month elapsed between the date of the plaintiff's notice and the defendants' reply;

(5) it was no defence for the publishers to say that the publication was not intended to be published of and concerning the plaintiff and that they had exercised all reasonable care in relation to it;

(6) the plaintiff's conduct as servant of the board was such as to have forfeited whatever esteem in which he was held by others before his dismissal. His summary dismissal by the board had left him little residue of credit and reputation to be further damaged by the libel in the defendants' newspaper. Accordingly the plaintiff would have one cent damages and costs.

Cases referred to:—

(1) *Dering* v. *Uris & Ors.* [1964] 2 W.L.R. 1298; [1964] 2 All E.R. 660.

(2) *Hilos* v. *Davies & Anor.* (1964) *The Times* June 20.

CIVIL SUIT.

A. L. Hills for the plaintiff.

K. C. Chia (*K. A. Menon* with him) for the defendants.

R. H. V. Rintoul held a watching brief for the Rubber Industry (Replanting) Board.

Cur. Adv. Vult.

Ong J.: The plaintiff is claiming damages for libel in respect of an article published by the defendants in their newspaper, *The Malayan Times.*

The plaintiff, now 52 years old, was a rubber planter of over 25 years' standing. His last appointment was from 1959 as General Manager of the properties of the Rubber Industry (Replanting) Board. On October 26, 1962, he was given notice of summary dismissal by his employers, requiring him forthwith to hand over his duties to another officer of the Board and to vacate the residence provided by the Board not later than October 31, 1962. On November 13, 1962, the defendant's newspaper published an article with big headlines "RRB EXPATRIATE 'PACKED OFF' FOR CORRUPTION". The statement of claim alleges a libel in the headlines

and the article thereunder which was as follows:—

"A senior expatriate officer in the Rubber Replanting Board's 'B Fund' Scheme has been recently relieved of his post and 'packed off' because of certain corrupt practices, it was reliably learnt today.

The officer's services were terminated on November 1 and his duties are now being taken over by a senior local officer.

This action followed the discovery by the authorities that the officer concerned had been involved in 'shady deals' involving approximately $100,000.

The Director of the Federation's Anti-Corruption Agency, Tuan Syed Abdul Rahman bin Syed Abdullah Aljoffree, whose department deals with such cases, said today: 'I am sorry I cannot comment on this particular case.'

However, he told *Malayan Times* that at present his department was more interested in preventing corruption or irregularities in government departments and public bodies than in trying to obtain conviction in court.

Tuan Syed Abdul Rahman explained that this was because it was very difficult to get witnesses to appear in court in corruption cases.

'Most of our information are from third parties and this by itself will not do,' he added.

But, he said, such information was very valuable in that it helped his department to curtail corruption in the government services.

He said that if his department found there was enough ground to strongly suspect but insufficient to 'book a person,' he usually recommended to the head of the department concerned about the susceptibility of such a person.

'The heads of various departments have been quite co-operative and have taken measures to see that corruption or irregularities are stopped in their respective places,' said Tuan Syed Abdul Rahman."

The plaintiff claims that the defendants meant and were understood by readers of the newspaper to mean that the plaintiff was the person referred to therein and that he had been guilty of corruption and dishonest dealing and further meant and were understood to mean that if it had been possible to bring him to trial in the criminal court, he could be convicted on a charge of corruption and the reason he was not charged was solely that there was not sufficient evidence to convict him of the said offence. Particulars under Rules of the Supreme Court, Order 19 rule 6(2) are given as follows:

"1. The plaintiff is the only senior expatriate officer in the Rubber Industry (Replanting) Board who was dismissed for any reason at or near the relevant times.

2. The publication of the remarks alleged to have been made by the Director of the Federation Anti-Corruption Agency in the same article makes them directly referable to the plaintiff's position.

3. The lay-out of the article implies that the plaintiff has been guilty of corruption and has only escaped prosecution through lack of evidence."

The plaintiff alleges that he has been thereby greatly injured in his credit and reputation and in his career as a rubber-planter and has been brought to public scandal, odium and contempt.

By their defence the defendants admit the publication but deny everything else, including any reference in the article as identifying the plaintiff. They further plead that the words complained of were published *bona fide* and without malice or negligence and innocently in relation to the plaintiff and that an offer of amends had been made by letter dated January 3, 1963 and January 24, 1963, which offer has not been withdrawn. This, of course, is the ground of defence provided by section 7 of the Defamation Ordinance, 1957. Finally, and in any event the defendants rely on justification and claim that the words complained of were true in substance and in fact. Their particulars of justification are as follows:

"That the plaintiff purported to enter into three (3) contracts amounting to $131,250.00 in total for and on behalf of The Rubber Industry (Replanting) Board or The Board of Administrators of the Small-holders Planting Material Scheme or The Board of Administrators of the Smallholders (Improved Supply) Planting Material Scheme, 1959, with Timber Engineering Limited, a company of which the plaintiff was at all material times one of the three directors, without any disclosure of such directorship to any of the aforesaid boards and caused the sum of $5,434.00 to be paid to the company without any authority so to do."

I have no doubt that the headlines and the article following were defamatory in their ordinary and natural meaning. It has not been suggested that they were not. As to identification of the plaintiff being the person referred to, I do not think it can be seriously suggested that he was not clearly pin-pointed in the article so as to be instantly recognisable by all those readers of the newspaper who happened to know him. The cap of a "Senior Expatriate Officer in the Rubber Replanting Board" fitted him but no other person. The task of identification was in fact absurdly simple; all the more so as the date of the plaintiff's dismissal was explicitly stated, with the further detail that he was succeeded by a senior local officer. Four witnesses called on behalf of the plaintiff had no hesitation in identifying him. It is true that none of these four had seen the public notice inserted by the Rubber Industry (Replanting) Board, which appeared on page 4 of the same issue of the defendant's newspaper, but anybody else who had read it with the article complained of should inevitably have connected them together. Even Inche Salim bin Mohamed Akib, the Chairman of the Board of Administrators of the Government Rubber Replanting Scheme, thought that the article referred to the plaintiff.

The rather more difficult question now arises, as to justification. "Corruption" and "corrupt practices" connote bribery, "the perversion of integrity by bribery or favour," as the *Oxford Dictionary* has it. The headlines and the whole of the article must be read together.

In such context the reference to obtaining a conviction in court makes it clear beyond any equivocation that the word "corruption" bears the meaning it has in the title of Act No. 42 of 1961, namely, the Prevention of Corruption Act. According to Mr. K. C. Chia, however, this word means nothing more than "moral obliquity" and he contends that the article simply suggested that the plaintiff was guilty of dishonest behaviour as a servant, with a view to private financial gain, not necessarily in the form of bribes, but rather of secret profits. I am afraid I do not agree with this interpretation.

That brings me to the question what have the defendants actually succeeded in justifying? On the evidence and the plaintiff's own admissions, I find as a fact that what they alleged in their particulars of justification were quite true. Nevertheless, there is a clear line of demarcation between misconduct punishable as a criminal offence and misconduct falling short of criminal which merely justifies the summary dismissal of a servant. The defendants' own witness Inche Salim was quite emphatic that the plaintiff was not dismissed for corruption. The newspaper article alleged that he was dismissed for corruption and therein lay the real sting of the libel. In order to succeed in their plea, the defendants must justify to the hilt. In this they have failed, and so it follows that I must find for the plaintiff.

As to the defence under section 7 of the Defamation Ordinance, 1957, it is sufficient for me to say, in rejecting it, that the offer of amends was not made as soon as practicable after the defendants received notice that the publication was or might be defamatory of the plaintiff, because a whole month elapsed between the date of the plaintiff's notice and the defendants' reply. Under any circumstances, I consider that there was an inordinate delay. Furthermore, I would refer to sub-section (5) of section 7 which reads as follows:

"7. (5) For the purposes of this section words shall be treated as published by one person (in this sub-section referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say —

(a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him;

(b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person;

and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this sub-section to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication."

The offending article was the result of an interview by the defendants' reporter with the Director of the Anti-Corruption Agency and plainly referred to a particular person whose identity was known or could have been discovered without the least difficulty. Certainly the reporter must have known. When the plaintiff was so clearly pin-pointed in the article, I do not think that the publisher can be heard to say that it was not intended to be published of and concerning the plaintiff or that the publisher had in the circumstances exercised all reasonable care in relation to the publication.

There now remains only the question of damages. Mr. Hill's contention is that this is a case for very substantial damages because the plaintiff was not charged with acting merely dishonourably but criminally; he was particularly vulnerable at the time of the publication of the libel as he had lost his job a few days earlier and he was a ruined man so far as future prospects of employment were concerned. There was the further aggravation that not only was no apology published but the editor still insisted in court that he believed the libel to be true.

In the assessment of damages I think I should place myself in the position of the jury in deciding what is fair, just and reasonable. In this connection I have to take into consideration the fact that the grounds for the plaintiff's summary dismissal were such that I do not think he has any reasonable expectation of future employment by any agency house or company. I have looked also into the pleadings in Civil Suit No. 176 of 1963 in which this plaintiff sued the Rubber Industry Replanting Board for damages for wrongful dismissal. The defendants in that action alleged misconduct by the plaintiff in a number of respects, the most serious of which undoubtedly reflected upon the plaintiff's honesty and integrity as regards the awarding of contracts for jungle clearing at rates which perhaps would not bear investigation; the utilisation of the board's funds for private and personal purposes; the contracts with Timber Engineering Ltd., involving a total sum of $131,250 and, lastly, without authority or approval of the board, entering into a contract with Malayan Planting Material Suppliers involving a sum of $275,000. This action was discontinued only at the last moment.

For the present purpose I shall refer in some detail to the Timber Engineering Ltd. This company was formed sometime in 1962 with a nominal share capital of $250,000 divided into shares of $1 each. In Exhibit D6, the form of annual return pursuant to section 109, made up to January 10, 1963 (being the 14th day after the date of the first ordinary general meeting in 1962) showed that only one share had been issued to each of its two directors, Mr. A. K. Robinson and Mr. J. A. Hislop. The particulars of directors of this company at the date of the annual return showed that the plain-

tiff was a third director of the company with Messrs. Robinson and Hislop. The plaintiff was also a director in another company, Timber Treatment Ltd., and he was its major shareholder. The plaintiff stated in his evidence that as a director of Timber Treatment Ltd. he was invited to be a director of Timber Engineering Ltd., in order to advise the latter company. It was a term of the plaintiff's contract of service with the board (Exhibit P4) that he would devote his whole time, attention and efforts solely to the work, business and interests of the board and that he would not during the terms of his employment, except with the consent of the board first obtained, undertake or be concerned or interested in any work other than of or for the board. He said that he had discussed with members of the board his connections with these two companies and no one had raised any objection. On this point there was only his bare word for it, there was no supporting evidence, and Inche Salim, whose name he mentioned as one of the members to whom he disclosed his connections with the two companies, stated that he first heard of the Timber Engineering Ltd. only at the beginning of October, 1962 while of the Timber Treatment Ltd., he knew nothing until the first mention of this company was made at the first day's hearing of this action on July 3rd, 1964. As between the evidence of the plaintiff and Inche Salim, I have no hesitation in accepting that of the latter as true. Of the two companies, the plaintiff said that Timber Engineering Ltd. never in fact commenced functioning. As to Timber Treatment Ltd. it was founded by the plaintiff himself "in good faith to supply treated timber for the government projects and he sincerely believed he was serving the board and this country." In my opinion this last statement was a piece of unadulterated hypocrisy. In signing the three agreements with Timber Engineering Ltd. on behalf of the board and in paying out an advance of $5,434 to that company without disclosing to the board his personal interests in those two companies, he was acting in a manner which can only be described as gross disloyalty. Timber Engineering Ltd. had a subscribed capital of $2, which was less than the proverbial shoe-string. From what sources was it going to obtain the funds to purchase timber from Timber Treatment Ltd. and engage workmen to carry out its contracts? Was not the advance payment of over $5,000 clear evidence of the plaintiff's intention to do favours to his friends and himself to the detriment of his employers' interests?

I have only recently been reading in *The Times*, the case of *Dering* v. *Uris & Ors.*[1] In the Law Report dated May 6, 1964, Dr. Dering was awarded a halfpenny damages for a libel contained in the following passage on page 155 of a book entitled "Exodus":

> "Here in Block X (at Auschwitz) Dr. Wirthe used women as guinea pigs and Dr. Schumann sterilized by castration and X-Ray and Clauberg removed ovaries and Dr. Dehring performed 17,000 'experiments' in surgery without anaesthetics."

The defendants admitted that those words were defamatory of the plaintiff but pleaded that they were true in substance and in fact. The defendants, however, were able to prove that the plaintiff performed only 90 operations instead of the 17,000 ascribed to him in the book. The jury found for the plaintiff but awarded him only one halfpenny damages.

In another *Times* Law Report, dated June 19, 1964, *Hilos* v. *Davies and another*,[2] the plaintiff, a farmer and former racehorce trainer, claimed damages for slander against the defendants for having made certain allegations against him to the stewards of the National Hunt Committee which caused them to withdraw his permit as trainer and to warn him off all National Hunt courses. As regards the assessment of damages, the jury were told by Edmund Davies J. that the National Hunt Committee was an influential body with power to make or break a man in the sporting world and that it was agreed that the plaintiff, Mr. Hilos, had been broken by being warned off National Hunt courses. The jury found for the plaintiff but nevertheless awarded him only a halfpenny damages.

I have taken time in giving this question of damages my most anxious consideration. In my opinion, the plaintiff's conduct as servant of the board was such as to have forfeited whatever esteem in which he was held by others before his dismissal. It was a sordid business — the betrayal of the trust and confidence reposed in him by the board. Re-employability predicates production of references by his previous employers, and he could never have got a satisfactory one from his last employer. On the whole, I think that his summary dismissal by the board had left him little residue of credit and reputation to be further damaged by the libel in the defendants' newspaper. I accordingly award him one cent damages but he will have the costs of this action.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Braddell & Ramani; Shearn Delamore & Co.*